



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Tark International
File: B-228170.4
Date: January 13, 1988

DIGEST

1. Protest of rejection of very low bid because bidder would not verify it and acceptance would be unfair is denied, where firm subsequently admits it did not price a significant part of the required work on the basis that the work was deleted by the solicitation amendment, but the amendment cannot reasonably be read as deleting the work.
2. Protest of allegedly ambiguous solicitation provision filed after bid opening is untimely.

DECISION

Tark International protests the rejection of its bid submitted in response to invitation for bids (IFB) No. DTCG23-87-B-60007, issued by the United States Coast Guard for the operation and maintenance of the Coast Guard's fire department at Kodiak, Alaska. The IFB was issued in connection with a cost comparison under Office of Management and Budget Circular No. A-76. We deny the protest in part and dismiss it in part.

The Coast Guard suspected a mistake in Tark's bid of \$3,672,518, because it was approximately \$3 million less than the next low bid and the estimate for government performance of the work. After repeated requests for Tark to verify the bid, the Coast Guard rejected the bid under the Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.406-3(g)(5) (1986), because Tark failed to verify and the agency determined that acceptance of the bid would be unfair. Tark seeks either award of the contract, with a price increase to cover a contract effort it did not price in the bid, or resolicitation of the requirement with a clearer statement of the government's needs.

The statement of work sets out both manning requirements and response requirements. There are four separate manning requirements: aircraft crash rescue fire companies,

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structural fire companies, supervisory personnel, and emergency recall provision (for disasters beyond minimum manning and equipment capabilities); and three response requirements: overall response time, response time for structural fires, and response time for aircraft rescue emergencies. Tark asserts that it read the Coast Guard's answer to the following question, which was incorporated in IFB amendment 0001, as deleting the aircraft rescue manning requirement:

"Q. Please clarify the manning requirements. They seem to conflict with the response times and the fact that you are providing 3 of each major type fire apparatus as GFE [government-furnished equipment].

"A. The manning requirements [for emergency recall and structural fire companies] as amended, are correct as are the response requirements [for structural fires and airport emergencies]. Possible confusion arises since the Coast Guard in effect is providing a 'back up' fire apparatus of each major type."

Tark points out that while the answer refers to the emergency recall and structural manning requirements, it does not mention aircraft rescue manning. The bid was low because, according to Tark, it did not cover the cost of manning aircraft crash fire rescue companies on the basis that the amendment effectively deleted that manning requirement.

There is no question that the IFB required aircraft rescue manning before amendment 0001. Moreover, Tark's interpretation of the question and answer as deleting that manning requirement is unreasonable and not consistent with the amendment read as a whole. In fact, amendment 0001 supplemented the aircraft rescue manning requirement by further requiring the contractor to provide additional personnel for a mini-pumper to respond to aircraft crash fire rescue incidents. Also, the terms of the amendment did not affect the IFB requirement for contractor response, with aircraft fire rescue engine companies, to aircraft crash fire rescue alarms. In sum, Tark's assertion that amendment 0001 deleted the requirement for airport manning, or at the least was unclear in that regard so that a resolicitation is warranted, is without merit.

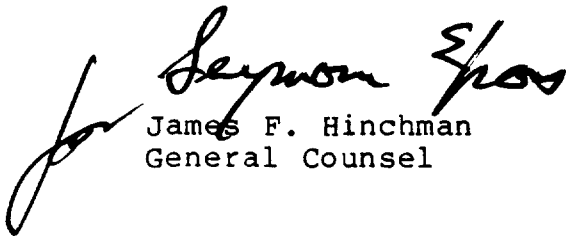
To the extent that Tark contends the IFB, as amended, was misleading or ambiguous, the protest is untimely. Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1987), provide that protests based upon alleged improprieties in a

solicitation that are apparent prior to bid opening must be filed before that time. This requirement applies to allegations concerning apparent ambiguities arising from written questions and answers incorporated in an IFB by amendment. Audio Visual Concepts, Inc., B-227166, July 24, 1987, 87-2 C.P.D. ¶ 86.

Here, Tark admits that it was aware of a possible ambiguity and says it priced its bid thinking "it had an edge on the other bidders" who likely would differ in their interpretations of the amendment. Since Tark did not protest prior to bid opening, its protest of that alleged solicitation impropriety is dismissed. Captain Hook Trading Co., B-224013, Nov. 17, 1986, 86-2 C.P.D. ¶ 566.

It is clear, then, that Tark failed to verify its low bid because the bid in fact did not represent an offer to meet all contract requirements at the stated price. The Coast Guard therefore properly rejected the bid. See FAR, 48 C.F.R. § 14.406-3(g)(5). In this respect, the price a firm bids is supposed to be the price at which it will do all the solicited and contracted work if it receives the award; thus, as a general matter, an agency cannot make an award at the bid price with the intention to increase the price later for work already required. See generally, FAR, 48 C.F.R. § 14.101.

The protest is denied in part and dismissed in part.


James F. Hinchman
General Counsel